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June 10, 1998

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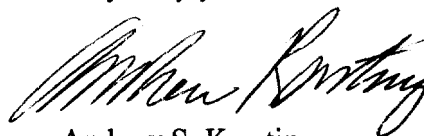
Re: Advanced Television Systems and Their Impact  
Upon the Existing Television Broadcast Service  
MM Docket No. 87-268

Dear Ms. Salas:

Transmitted herewith on behalf of Pappas Telecasting of America, A California Limited Partnership, are an original and 11 copies of its "Reply to Partial Opposition to Petition for Reconsideration," which is being filed in connection with the Commission's *Report and Order* in MM Docket No. 87-268, *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, FCC 98-24 (released February 23, 1998), in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate directly with this office.

Very truly yours,



Andrew S. Kersting  
Counsel for Pappas Telecasting of America,  
A California Limited Partnership

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Advanced Television Systems )  
and Their Impact Upon the Existing ) MM Docket No. 87-268  
Television Broadcast Service )

To: The Commission

**REPLY TO PARTIAL OPPOSITION TO  
PETITION FOR RECONSIDERATION**

Pappas Telecasting of America, A California Limited Partnership ("Pappas"), by its counsel, hereby replies to the "Opposition to Pappas Petition for Reconsideration," filed May 26, 1998 ("Partial Opposition"), in the above-captioned proceeding by Kentucky Authority for Educational Television ("KET").<sup>1</sup> In reply, the following is stated:

In its Partial Opposition, KET makes clear that it is not necessarily opposed to the changes proposed in Pappas' April 20, 1998, Petition for Reconsideration ("Petition"), but, instead, as a public broadcaster, KET could not afford to commission its own independent engineering analysis to confirm that Pappas' pending reconsideration proposal would not have an adverse effect on WKGB-TV's proposed DTV operation. Indeed, KET readily admits that it "does not know whether the channel substitution proposed by Pappas would in fact cause any present or future negative impact on KET's operation of digital facilities for Station WKGB-TV." Partial Opposition, p. 2.

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<sup>1</sup> KET is the licensee of noncommercial educational Station WKGB-TV, Bowling Green, Kentucky, which has been allotted DTV Channel 48 in this proceeding. See *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket No. 87-268, FCC 98-24 (released February 23, 1998), Appendix B-19.

Thus, although KET has opposed Pappas' reconsideration proposal out of an abundance of caution in an effort to protect its DTV channel from undesired interference, it has not challenged the merits of Pappas' alternative reconsideration proposals or otherwise demonstrated that either of them is not viable.

Moreover, although KET argues that any changes in the DTV Table of Allotments "creates uncertainty, inhibits planning and unnecessarily complicates and slows the transition to digital" (*Id.*), KET's argument is made weighty because Pappas' proposal will not have any effect upon WKGB-TV's DTV operation. Indeed, in the context of discussing the displacement of existing low power television stations by full service DTV operations in its *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket No. 87-268, FCC 98-24 (released February 23, 1998) ("*MO&O*"), the Commission stated that alternative channels would be considered for full service stations "if they would provide the same replication as a station's existing DTV channel and were *within 3 channels above or below that channel.*" *Id.* at ¶107, n.75 (emphasis added). With respect to the latter criterion, the Commission stated: "[W]e believe that a change within 3 channels would not affect any DTV technical plans or operations that a station might already have in place." *Id.* Therefore, because Pappas has merely proposed to change the DTV allotment for Station WKGB-TV from DTV Channel 48 to Channel 47, grant of Pappas' Petition would have no effect upon KET's technical plans or operations for Station WKGB-TV.

Furthermore, KET's Partial Opposition makes no reference to Pappas' alternative proposal of changing the NTSC allotment at Owensboro from Channel 48 to Channel 47. Therefore, even assuming, *arguendo*, the Commission were to reject Pappas' request to change the DTV allotment for Station WKGB-TV, KET has effectively consented to Pappas' alternative proposal to permit

Pappas to amend its pending NTSC application to specify operation on Channel 47 in lieu of Channel 48. As shown in the engineering materials in support of Pappas' Petition, the substitution of NTSC Channel 47 for the existing Channel 48 allotment at Owensboro would result in only negligible interference to other DTV or NTSC facilities (less than 0.2%), and would not conflict with any DTV allotment. The Commission has stated throughout this proceeding that it intends to give broadcasters the flexibility to develop alternative allotment plans where they do not result in additional interference to other stations and/or allotments:

[W]e will make changes to the DTV Table where such changes have the agreement of all affected broadcasters or do not result in additional interference to other stations or allotments, and do not conflict with our other DTV allotment goals . . . .

*MO&O* at ¶187. Therefore, because KET has effectively consented to Pappas' alternative proposal, and that proposal will not result in additional interference to other stations and/or allotments, or otherwise conflict with the Commission's DTV allotment goals, the Commission should direct Pappas to amend its application to specify operation on NTSC Channel 47 in lieu of Channel 48.

Finally, the pending settlement proposal between Pappas and the only other mutually exclusive applicant, South Central Communications Corporation ("SCCC"), provides an independent basis for granting Pappas' Petition. In the Balanced Budget Act of 1997,<sup>2</sup> Congress directed the Commission to waive its rules to the extent necessary to permit parties to resolve conflicts between their pending applications during the statutory settlement period.<sup>3</sup> In accordance with the statutory

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<sup>2</sup> Pub. L. No. 105-33, 111 Stat. 251 (1997).

<sup>3</sup> See 47 U.S.C. §309(l). Section 309(l) was added to the Communications Act of 1934, as amended, by Section 3002(a)(3) of the Balanced Budget Act. Section 309(l) directs the Commission to "waive *any* provisions of its regulations necessary" to permit mutually exclusive broadcast applicants to enter into an agreement to procure the removal of a conflict between their  
(continued...)

settlement period provided in the Budget Act, Pappas and SCCC resolved the conflict between their mutually exclusive applications for the Channel 48 facility at Owensboro by entering into a settlement agreement which contemplates the grant of Pappas' application.<sup>4</sup>

In this case, the Commission is not required to "waive" any provisions of its rules in order to further the Congressional intent of promoting the initiation of new broadcast service to the public. Instead, the Commission must merely direct Pappas to amend its pending NTSC application to specify operation on Channel 47, one channel below the existing allotment at Owensboro. Directing Pappas to amend its pending NTSC application in this manner and precluding additional applicants from having an opportunity to file for this facility is entirely consistent with Congress' directive to "waive *any* provisions of its regulations necessary" to permit mutually exclusive broadcast applicants to enter into agreements to procure the removal of conflicts between their respective applications during the 180-day statutory settlement period. *See* 47 U.S.C. §309(l). It also is consistent with the Commission's *Report and Order* in ET Docket No. 97-157, *Reallocation of Television Channels 60-69, the 746-806 MHz Band*, 12 FCC Rcd 22953 (1998), in which the Commission announced that, with respect to pending applications and rulemaking petitions involving Channels 60-69, the Commission will provide applications and rulemaking petitioners with an opportunity to amend their respective applications and petitions, if possible, to seek a channel below Channel 60. *Id.* at ¶40. In implementing this procedure, the Commission will not permit additional applicants to file for

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<sup>3</sup>(...continued)

respective applications during the 180-day period beginning on the date of enactment of the Balanced Budget Act (emphasis added). The Budget Act was signed into law on August 5, 1997, and, thus, the 180-day period continued through February 1, 1998.

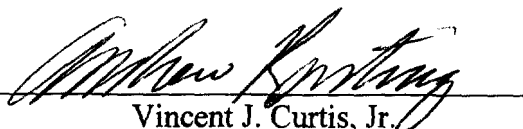
<sup>4</sup> *See* Joint Request for Approval of Settlement Agreement, filed January 30, 1998 (File Nos. BPCT-960722KL; BPCT-960920IV).

available channels which are not the subject of a rulemaking petition. Therefore, assuming, *arguendo*, the Commission should reject Pappas' proposal to change the DTV allotment at Bowling Green from Channel 48 to Channel 47, the Commission should direct Pappas to amend its pending NTSC application to specify operation on Channel 47. As demonstrated in Pappas' Petition, the grant of Pappas' alternative proposal will provide substantial public interest benefits, including the provision of a first local television service to the community of Owensboro, and promote the emergence and development of new networks.

WHEREFORE, in light of the foregoing, Pappas Telecasting of America, A California Limited Partnership, respectfully requests that the Commission GRANT reconsideration of its *MO&O* by substituting DTV Channel 47 for Channel 48 at Bowling Green, Kentucky, or, alternatively, directing Pappas to amend its pending NTSC application to specify operation on Channel 47 at Owensboro, Kentucky.

Respectfully submitted,

PAPPAS TELECASTING OF AMERICA,  
A CALIFORNIA LIMITED PARTNERSHIP

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June 10, 1998

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**CERTIFICATE OF SERVICE**

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C, hereby certify that on this 10th day of June, 1998, copies of the foregoing "Reply to Partial Opposition to Petition for Reconsideration" were hand delivered or mailed first-class, postage pre-paid, to the following:

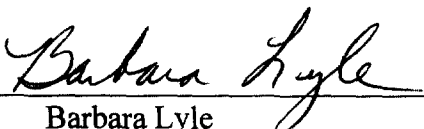
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